

## CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Emily Devaney	Team: Squad #4	CCRB Case #: 202007372	<input checked="" type="checkbox"/> Force	<input type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input checked="" type="checkbox"/> Abuse	<input type="checkbox"/> O.L.	<input checked="" type="checkbox"/> Injury
Incident Date(s) Sunday, 10/18/2020 3:20 PM	Location of Incident: Inside of § 87(2)(b)	Precinct: 24	18 Mo. SOL 4/18/2022	EO SOL 5/4/2022	
Date/Time CV Reported Sun, 10/18/2020 5:00 PM	CV Reported At: IAB	How CV Reported: Phone	Date/Time Received at CCRB Fri, 11/06/2020 10:58 AM		

Complainant/Victim	Type	Home Address
§ 87(2)(b)	§ 87(2)(b)	§ 87(2)(b)

Witness(es)	Home Address
§ 87(2)(b)	§ 87(2)(b)

Subject Officer(s)	Shield	TaxID	Command
1. POM Harry Cai	6705	947723	024 PCT
2. POM Andrew Nyberg	03026	903181	024 PCT

Officer(s)	Allegation	Investigator Recommendation
A.POM Harry Cai	Force: Police Officer Harry Cai hit § 87(2)(b) against a wall.	§ 87(2)(g), § 87(4-b)
B.POM Harry Cai	Force: Police Officer Harry Cai used a chokehold against § 87(2)(b)	§ 87(2)(g), § 87(4-b)
C.POM Harry Cai	Force: Police Officer Harry Cai restricted § 87(2)(b) breathing.	§ 87(2)(g), § 87(4-b)
D.POM Harry Cai	Force: Police Officer Harry Cai hit § 87(2)(b) against a wall.	§ 87(2)(g), § 87(4-b)
E.POM Harry Cai	Force: Police Officer Harry Cai used a chokehold against § 87(2)(b)	§ 87(2)(g), § 87(4-b)
F.POM Harry Cai	Force: Police Officer Harry Cai restricted § 87(2)(b) breathing.	§ 87(2)(g), § 87(4-b)
G.POM Harry Cai	Force: Police Officer Harry Cai hit § 87(2)(b) against a wall.	§ 87(2)(g), § 87(4-b)
H.POM Harry Cai	Force: Police Officer Harry Cai used a chokehold against § 87(2)(b)	§ 87(2)(g), § 87(4-b)
I.POM Harry Cai	Force: Police Officer Harry Cai restricted § 87(2)(b) breathing.	§ 87(2)(g), § 87(4-b)
J.POM Harry Cai	Abuse: Police Officer Harry Cai forcibly removed § 87(2)(b) to the hospital.	§ 87(2)(g), § 87(4-b)
K.POM Andrew Nyberg	Abuse: Police Officer Andrew Nyberg forcibly removed § 87(2)(b) to the hospital.	§ 87(2)(g), § 87(4-b)
§ 87(2)(g), § 87(4-b)	§ 87(2)(b)	§ 87(2)(g), § 87(4-b)
§ 87(2)(g), § 87(4-b)	§ 87(2)(b)	§ 87(2)(g), § 87(4-b)
§ 87(2)(g), § 87(4-b)	§ 87(2)(b)	§ 87(2)(g), § 87(4-b)

Officer(s)	Allegation	Investigator Recommendation
§ 87(2)(g), § 87(4-b)		

### Case Summary

On October 18, 2020, § 87(2)(b) filed this complaint with IAB, who forwarded the complaint to the CCRB on November 6, 2020.

On October 18, 2020, at approximately 3:20 p.m., the Institute for Community Living (ICL) Program Supervisor § 87(2)(b) called 911 to report that § 87(2)(b) a resident of ICL, had not taken her medication and needed her to be transported to the hospital. Emergency Medical Services (EMS) personnel, along with 24<sup>th</sup> Precinct Police Officers Harry Cai and Andrew Nyberg responded to the location at § 87(2)(b) in Manhattan. EMS and police officers told § 87(2)(b) she needed to go to the hospital, and she refused. PO Cai allegedly pushed § 87(2)(b) against the wall and choked her (**Allegation A-B: Force**, § 87(2)(g) PO Cai's pressure against § 87(2)(b) neck allegedly restricted her breathing (**Allegation C: Force**, § 87(2)(g) PO Cai and PO Nyberg escorted § 87(2)(b) down the stairwell. At the landing, PO Cai hit § 87(2)(b) against the wall by the throat, choking her (**Allegation D-E: Force**, § 87(2)(g) PO Cai's use of force restricted § 87(2)(b) breathing a second time (**Allegation F: Force**, § 87(2)(g) PO Cai led § 87(2)(b) into the lobby where he pushed her against the wall (**Allegation G: Force**, § 87(2)(g) PO Cai allegedly choked § 87(2)(b) and restricted her breathing a third time (**Allegation H-I: Force**, § 87(2)(g) § 87(2)(b) was removed to § 87(2)(b) (Allegations J-K: Abuse of Authority, § 87(2)(g)

§ 87(2)(g), § 87(4-b)

The investigation obtained four body-worn camera (BWC) videos, two from each officer (Board Review 01-04).

### Findings and Recommendations

**Allegation (A) Force: Police Officer Harry Cai hit § 87(2)(b) against a wall.**

**Allegation (B) Force: Police Officer Harry Cai used a chokehold against § 87(2)(b)**

**Allegation (C) Force: Police Officer Harry Cai restricted § 87(2)(b) breathing.**

It is undisputed that § 87(2)(b) had not taken her psychiatric medicine as prescribed. § 87(2)(b) called 911 and requested medical attention.

§ 87(2)(b) testified that EMS, officers, and ICL staff members entered her room and told her that she needed to go to the hospital (Board Review 05). § 87(2)(b) raised her voice and told § 87(2)(b) that she was going to hurt him and that she felt like punching him. § 87(2)(b) only said this because she was angry, and she did not intend to hurt him. PO Cai asked her, "Is that a threat?" and she replied, "Yes." Either PO Cai or PO Nyberg handcuffed her. § 87(2)(b) said, "Why am I in handcuffs? I should spit on you for that." § 87(2)(b) said this because she was upset but did not intend to spit on the officers. PO Cai put his hands on the left side of § 87(2)(b) neck and pushed her against the wall. The impact with the wall caused a bump, or hematoma, on the right side of her forehead. PO Cai held her against the wall for approximately 60-seconds. PO Cai's force plus § 87(2)(b) asthma inhibited her breathing. "I can't breathe," she told PO Cai. PO Cai escorted her out of the room.

§ 87(2)(b) testified that when § 87(2)(b) threatened to spit, PO Cai pushed § 87(2)(b) face against the wall with either the palm of his hand or his forearm (Board Review 06). § 87(2)(b) was in handcuffs at the time.

IAB provided a photo entitled, "PHOTO OF INJURIES," with the IAB log materials (Board Review 07). There was no description or context provided with the photos. The photo depicted § 87(2)(b) face with her forehead centered. There appeared to be a hematoma on her forehead above her left eyebrow.

PO Cai testified that § 87(2)(b) threatened to spit, and EMS offered to give her a hygienic facemask (Board Review 08). PO Cai did not use any force against § 87(2)(b) at that time. PO Cai stated that at no point did he choke or restrict § 87(2)(b) breathing in any way. During his interview, PO Cai viewed the photo of § 87(2)(b) forehead and stated that he did not know when the photo was taken or by whom. PO Cai did not recall seeing any injuries on § 87(2)(b). PO Cai did not prepare a Threat Resistance and Injury (TRI) report because no force was used.

PO Nyberg's testimony was consistent with that of PO Cai (Board Review 09). PO Nyberg also did not see any injuries on § 87(2)(b).

PO Cai's body-worn camera (BWC) video showed this portion of the incident from the 1:10 minute-mark until the 2:50 minute-mark of the player's timestamp (Board Review 01). At 1:12, § 87(2)(b) said to PO Cai and PO Nyberg, "Don't get beat up, officer." At 1:25, § 87(2)(b) said to a staff member, "Do you want to get fucked up right now? ... What the fuck is wrong with you?" At 1:40, PO Cai and PO Nyberg handcuffed § 87(2)(b). At 2:27, PO Cai said, "What are you doing?" § 87(2)(b) moved or was pushed against the wall, but the video was unclear how she came to be against the wall. PO Cai asked again, "What are you doing?" § 87(2)(b) replied, "I'll spit on you." PO Cai asked, "Do you want a mask?" § 87(2)(b) told PO Cai that he was "manhandling" her, and PO Cai replied, "No, I'm not." PO Cai and § 87(2)(b) moved out of the apartment.

PO Nyberg's BWC video similarly did not show if PO Cai pushed § 87(2)(b) against the wall by her neck (Board Review 03). However, at the 00:47 minute-mark, PO Cai was shown holding onto § 87(2)(b) left arm before she was against the wall.

PO Cai viewed this BWC clip during his interview and testified that he asked § 87(2)(b) what she was doing because she was pulling away from him and struggling to get free (Board Review 07). PO Cai held onto § 87(2)(b) arm with one hand and had his other hand at his side. PO Cai denied that he pushed § 87(2)(b) against the wall.

The BWC videos and § 87(2)(b) testimony provided enough evidence for the investigation to determine, based on a preponderance, that PO Cai pushed § 87(2)(b) against the wall. However, it is unclear where PO Cai's hands made contact with § 87(2)(b) at the time and with what amount of force, if any. Based on the video evidence, § 87(2)(b) right side of her head would have collided with the wall causing an injury on the right side of her head, not the left as depicted in the photo. The investigation determined that the injury was not sustained as a result of PO Cai's action at this point.

According to NYPD Patrol Guide Procedure 221-01, officers shall not use any level of force on handcuffed or otherwise restrained subjects unless necessary to prevent injury, escape, or to overcome active physical resistance or assault (Board Review 10). Any application of force must be reasonable under the circumstances. Members of the service shall not use a chokehold, which is defined as any pressure to the throat or windpipe that may prevent or hinder breathing or reduce intake of air.

§ 87(2)(g)

§ 87(2)(g) Since PO Cai denied pushing her at all, he was unable to provide any explanation to why force was necessary at that time. § 87(2)(g)

§ 87(2)(g)

§ 87(2)(g)

**Allegation (D) Force: Police Officer Harry Cai hit § 87(2)(b) against a wall.**

**Allegation (E) Force: Police Officer Harry Cai used a chokehold against § 87(2)(b)**

**Allegation (F) Force: Police Officer Harry Cai restricted § 87(2)(b) breathing.**

§ 87(2)(b) testified that PO Cai gripped her tightly by the wrists as he escorted her down the stairwell (Board Review 05). This caused her discomfort, and she “wiggled” in attempt to shift her arms in PO Cai’s grasp. § 87(2)(b) was not attempting to resist or flee, merely alleviate the wrist pain. PO Cai pushed § 87(2)(b) against the wall by the neck, in the same manner as the first time. § 87(2)(b) struggled to breathe under PO Cai’s pressure. § 87(2)(b) said, “I can’t breathe.” PO Cai let go of § 87(2)(b) and they continued walking.

§ 87(2)(b) testified that § 87(2)(b) struggled against PO Cai by planting her feet and putting her weight against him (Board Review 06). PO Cai pushed § 87(2)(b) multiple times and the two struggled down the stairs. At times, PO Cai had his hands on her arms and her head. § 87(2)(b) was unable to remember exactly where PO Cai made contact with § 87(2)(b). When they reached the landing, PO Cai pushed § 87(2)(b) causing her head to hit either the wall or the stairwell with such force that § 87(2)(b) believed § 87(2)(b) must have been injured. § 87(2)(b) cringed and felt that this was uncomfortable to watch. § 87(2)(b) did not recall specifically if PO Cai made contact with § 87(2)(b) neck, but he believed it was likely that PO Cai did touch her neck given the nature of the struggle. § 87(2)(b) did not know if PO Cai choked § 87(2)(b) or if her breathing was restricted.

PO Cai testified that § 87(2)(b) pulled forward, and he pushed her against the wall to restrain her (Board Review 08). § 87(2)(b) turned her head and threatened to spit and bite. PO Cai pushed his forearm against the side of § 87(2)(b) face to turn it away from him so that she would not spit or bite. § 87(2)(b) said that PO Cai was choking her. PO Cai replied that he was not choking her. § 87(2)(b) breathing was not restricted since she was talking. PO Cai did not think he made contact with § 87(2)(b) neck. PO Cai did not prepare a TRI report because no force was used.

PO Nyberg’s second BWC video showed this portion of the incident from the 1:45 minute-mark until the 2:00 minute-mark of the player’s timestamp (Board Review 02). At 1:51, PO Cai and § 87(2)(b) reached the bottom of the stairs, and § 87(2)(b) appeared to pull forward, toward the right of the frame. PO Cai’s right arm was wrapped around § 87(2)(b) left arm, while his left arm reached up toward § 87(2)(b). At 1:54, § 87(2)(b) said, “Oh, you’re choking me now.” At 1:57, she yells, “Ow!” At 2:00, § 87(2)(b) was against the wall.

PO Cai’s BWC video depicted this portion of the incident at the 3:30 minute-mark (Board Review 01). At 3:31, PO Cai appeared to grab § 87(2)(b) near her neck. The frame moved quickly, and then the video ended.

Screenshots captured from PO Cai’s BWC video at the 15:34:11 minute-mark and 15:34:12 minute-



mark of the hardcoded timestamp showed that PO Cai first grabbed the collar of § 87(2)(b) jacket, per the image “202007372\_vlcsnap\_002.png” (Board Review 11). It appeared, however, that PO Cai also made contact with § 87(2)(b) throat or windpipe under her chin, per images “202007372\_vlcsnap\_004.png” and “202007373\_vlcsnap\_005.png” (Board Review 11).

PO Cai viewed his BWC video during his interview and stated that, at this point, he had used his forearm to push § 87(2)(b) head away (Board Review 08). PO Cai denied choking § 87(2)(b). PO Cai did not make contact with § 87(2)(b) neck and did not restrict her breathing in any way. PO Cai’s attention was drawn specifically to the frame at the 3:31 minute-mark of the player’s timestamp, and PO Cai identified his thumb in the frame. When asked what he was doing with his hand at that point, PO Cai stated that he was trying to control § 87(2)(b) head because she had threatened to spit.

PO Nyberg testified that PO Cai turned § 87(2)(b) against the wall to limit her movement so that she would not spit (Board Review 09). PO Cai did not hit § 87(2)(b) against the wall. PO Cai grabbed § 87(2)(b) arm or shoulder and did not make contact with her neck. PO Nyberg denied that PO Cai choked § 87(2)(b). PO Nyberg knew that § 87(2)(b) breathing was not restricted because she spoke in a normal tone.

In the IAB photo, “PHOTO OF INJURIES,” there appeared to be a hematoma on § 87(2)(b) forehead above her left eyebrow (Board Review 07).

§ 87(2)(g)

NYPD Patrol Guide Procedure 221-01 states that officers shall not use any level of force on handcuffed or otherwise restrained subjects unless necessary to prevent injury, escape, or to overcome active physical resistance or assault (Board Review 10). Any application of force must be reasonable under the circumstances. Members of the service shall not use a chokehold, which is defined as any pressure to the throat or windpipe that may prevent or hinder breathing or reduce intake of air.

§ 87(2)(g) § 87(2)(b) was physically resisting and threatened to spit earlier in the encounter, § 87(2)(g). However, PO Nyberg’s and PO Cai’s BWC videos showed that PO Cai had his right arm around § 87(2)(b) left arm and his left hand grabbing her collar at her neck when he pushed her against the wall. The screenshots from PO Cai’s BWC showed that he was making contact with § 87(2)(b) throat at the time of the push. § 87(2)(g)

**Allegation (G) Force: Police Officer Harry Cai hit § 87(2)(b) against a wall.**

**Allegation (H) Force: Police Officer Harry Cai used a chokehold against § 87(2)(b)**

**Allegation (I) Force: Police Officer Harry Cai restricted § 87(2)(b) breathing.**

§ 87(2)(b) testified that PO Cai escorted her into the lobby where EMS was waiting with a wheelchair (Board Review 05). § 87(2)(b) shifted her arms again because she was in pain from PO Cai’s grip. PO Cai pushed § 87(2)(b) into the wall, in the same manner as the prior two times. § 87(2)(b) breathing was restricted again. PO Cai asked § 87(2)(b) if she would cooperate and sit in the chair. § 87(2)(b) replied, “Yes,” and PO Cai released her.

§ 87(2)(b) did not report that PO Cai pushed § 87(2)(b) or restricted her breathing at this point (Board Review 06). § 87(2)(b) stated that, generally, § 87(2)(b) and PO Cai struggled using their arms and legs.

PO Cai testified that he did not recall how he and PO Nyberg got § 87(2)(b) to leave (Board Review 08).

PO Nyberg's second BWC video capture this portion of the incident from the 2:07 minute-mark until the 2:40 minute-mark of the player's timestamp (Board Review 02). At 2:10, PO Cai said, "You're kicking me, huh?" PO Cai held § 87(2)(b) against the wall. At 2:16, PO Cai was shown holding § 87(2)(b) with his arms looped through § 87(2)(b) arms behind her back. At the same time, PO Cai said, "She's kicking."

PO Cai's second BWC video captured this portion of the incident from the 00:05 minute-mark until the 00:40 minute-mark, but the frame was not clear (Board Review 04).

The evidence does not clearly show how or if § 87(2)(b) was resisting. It also does not clearly show how or if PO Cai pushed her against the wall. It is clear that PO Cai held § 87(2)(b) by her arms against the wall. § 87(2)(g)

§ 87(2)(b) The BWC videos clearly showed that PO Cai was not making contact with § 87(2)(b) throat or windpipe. § 87(2)(g) (b)

**Allegation (J) Abuse of Authority: Police Officer Harry Cai forcibly removed § 87(2)(b) to the hospital.**

**Allegation (K) Abuse of Authority: Police Officer Andrew Nyberg forcibly removed § 87(2)(b) to the hospital.**

It is undisputed that § 87(2)(b) had not taken her psychiatric medicine as prescribed. § 87(2)(b) called 911 and requested medical attention.

According to 911 call, § 87(2)(b) specifically requested that § 87(2)(b) be removed to the hospital because she was not taking her medication and was beginning to exhibit signs of having a psychiatric episode (Board Review 12).

PO Cai and PO Nyberg both testified that it was § 87(2)(b) decision to have § 87(2)(b) removed to the hospital since he was responsible for the residents at the ICL facility (Board Review 08-09, respectively). EMS were automatically dispatched to the location since the job involved an emotionally disturbed person (EDP). PO Cai also stated that he believed § 87(2)(b) was a danger to others based on her "belligerent" behavior of yelling and threatening staff (Board Review 08).

According to NYPD Patrol Guide Procedure 221-13, an emotionally disturbed person is a person who appears to be mentally ill or temporarily deranged and is conducting themselves in a manner which a police officer reasonably believed is likely to result in serious injury to himself or others (Board Review 13). If such person is restrained, officers are required to remove them to the hospital in ambulance.

§ 87(2)(g)

§ 87(2)(g)

§ 87(2)(g), § 87(4-b)

§ 87(2)(g), § 87(4-b)



**Civilian and Officer CCRB Histories**


- This is the first CCRB complaint to which § 87(2)(b) has been a party (Board Review 18).
- PO Cai has been a member of service for 13 years and has been a subject in one additional CCRB complaint and one allegation which was not substantiated (Board Review 19). § 87(2)(g)
- PO Nyberg has been a member of service for 28 years and has been a subject in eight additional CCRB investigations and twelve allegations, of which one was substantiated (Board Review 19):
  - 9600111 involved a substantiated allegation of force against PO Nyberg. The Board did not recommend discipline.
  - § 87(2)(g)

**Mediation, Civil, and Criminal Histories**

- This complaint was not suitable for mediation.
- § 87(2)(b) filed a Notice of Claim with the City of New York claiming \$1,000,000.00 as redress (Board Review 20). § 87(2)(b)
- [§ 87(2)(b)] [§§ 86(1)(3)&(4)] [§ 87(2)(c)]

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Squad: 4

Investigator:  Inv. Emily Devaney 03/18/2022  
Signature Print Title & Name Date

Squad Leader: Raquel Velasquez IM Raquel Velasquez 03/18/2022  
Signature Print Title & Name Date

Reviewer: Signature Print Title & Name Date